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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,243	01/26/2004	Michelle M. Haag	B-IP03003 [7666.3001.001]	1752
23399 7590 10/16/2007 REISING, ETHINGTON, BARNES, KISSELLE, P.C. P O BOX 4390 TROY, MI 48099-4390			EXAMINER TOMPKINS, ALISSA JILL	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 10/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,243

Applicant(s)

HAAG, MICHELLE M.

Examiner

Alissa J. Tompkins

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s).

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3765

DETAILED ACTION

Response to Amendment

Applicant's amendment filed 2/26/2007 has been received. Claims 1-38 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust (U.S. 4,009,495). Faust discloses an undergarment comprising a top opening with a waistband, a front panel, back panel, a second panel, and two leg openings. The undergarment can be in the form of a panty or a brief (Column 2, 18). It is noted by the examiner that panties do not cover the thigh of a wearer, while some forms of briefs do cover the thigh of the wearer. The front panel covers at least a portion of the abdomen of the wearer. The front panel 1 has a plurality of first threads knitted of stretch nylon or similar synthetic stretch material (Column 1, 25-26). Attached to the front panel is a second panel 2, that has a plurality of second threads comprising cotton. The second

Art Unit: 3765

panel 2 covers at least a portion of the crotch area of the wearer. The second panel along with the sides of the front panel are integrally knitted with cotton to provide a high degree of ventilation (Column 1, 28-29). Also attached to the front panel and to the second panel is a back panel, comprising a plurality of third threads. The back panel covers the rear of the wearer. The back panel is made of a synthetic material such as nylon. It is well known in the art that the first, second, and third threads would be formed in a repeating pattern to provide an opening between threads of each pattern. The undergarment of Faust has a mesh opening on the second panel that is 10 times more than the mesh openings of the front panel (Column 2, 23-24). It is noted by the Examiner that the Applicant's specification does not provide any criticality as to why the openings in the second panel have to be between $2\frac{9}{3}$ - $8\frac{3}{3}$ -6 times greater than the average area of the openings of the front panel, so as such, Faust's undergarment provides a very high degree of ventilation to genital parts of the body that tend to perspire (Column 1, 53-54). The undergarment therefore has a front panel that is sufficiently tight in comparison to the second panel, allowing overgarments to slide easily over the front panel. It can be seen that the second panel is attached to a front and a rear face of the front panel and the third panel is attached to a front and a rear face of the front panel. It can also be seen that the second panel is attached to a third panel.

As for claims 5 and 7, it is well known that panty hose are often worn in place of traditional undergarments, and a thong type panty is often worn in place of a traditional

Art Unit: 3765

panty. Since these alternatives are well known to a person having ordinary skill in the art, it would have been obvious to make these modifications.

Response to Arguments

Applicant's arguments filed 2/26/2007 have been fully considered but they are not persuasive.

Applicant submits that Faust does not disclose openings between 2-9 or 3-8 or 3-6 times greater, but rather states that the crotch portion has considerably larger mesh than the rest of the panty. However, Faust does say that his mesh opening is 10 times more than the mesh openings in the knit body portion. Applicant states that the space of the fibers associated with such large openings can cause irritation when the fibers rub against the skin. However, this assertion is not supported in the specification. Therefore, since this is no criticality for the claimed ranges and since Faust provides the same function as the instant invention the rejections presented in the first Office Action remain.

Additionally, applicant submits that the Examiner did not state that any of the dependent claims would be allowed if rewritten in independent form. The arguments that the applicant has submitted for claims 11, 12, and 16 provide no structure to the invention. Therefore, the rejections presented in the first Office Action remain.

Applicant submits that claim 17 includes the limitation, "wherein the second panel is secured to the front panel by stitching," which is contrary to the teaching of Faust

Art Unit: 3765

there the panels should be knitted together. Applicant also argues that claim 18 includes the limitation "wherein the stitching comprises cotton," and claim 19 " wherein the back panel is secured to the second panel by stitching comprising cotton." Applicant does not agree that these claims are obvious in light of Faust. Faust shows a front panel 1 having a plurality of first threads knitted of stretch nylon or similar synthetic stretch material (Column 1, 25-26). Attached to the front panel is a second panel 2, that has a plurality of second threads comprising cotton. It is noted by the Examiner that knitting and stitching are both forms of interlacing yarns. They are viewed as functional equivalents in the art. Therefore, the rejections in view of Faust in the first Office Action remain.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3765

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

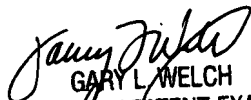
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins
Patent Examiner
Art Unit 3765
October 4, 2007

AJT


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